IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9513 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SURESH SHANKARLAL THAKKAR

Versus

COMMISSIONER OF POLICE

Appearance:

MR SATISH R PATEL for Petitioner

MR KT DAVE, AGP, for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 23/03/2000

ORAL JUDGEMENT

1. The Commissioner of Police, Baroda City, Baroda, passed an order on September 10, 1999, in exercise of powers under Section 3(2) of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short), detaining the petitioner-Suresh Shankarlal Thakkar under

the provisions of the PASA Act.

2. The detaining authority took into consideration seven offences registered against the detenu under Bombay Prohibition Act. The authority also considered statements of three anonymous witnesses and, after recording satisfaction for the need for exercise of powers under Section 9(2) of the PASA Act, exercised that privilege of not disclosing identity of the witnesses. The authority came to a conclusion that the detenu is a bootlegger and his activities are detrimental to public order and public health. He is, therefore, required to be immediately detained from pursuing his illegal and anti-social activities. The authority considered possibility of resorting to less drastic remedies and came to conclusion that detention under PASA was the only efficacious remedy that can be resorted to in order to immediately prevent the detenu from pursuing his illegal and anti-social activities.

3. The order of detention is challenged by this petition on various grounds. Mr. Patel, learned advocate appearing for the petitioner, however, has restricted his arguments to the ground of delay in considering/complying with the representation. He submitted that a representation was made on behalf of the detenu on November 19, 1999. It was addressed to the Home Minister, Government of Gujarat, Gandhinagar. It was received on November 20, 1999 by the addressee. According to Mr. Patel, certain documents were demanded on behalf of the detenu and the same have been supplied on February 8, 2000 and, therefore, according to Mr. Patel, there is a gross delay in considering the representation and complying with it. This has affected the right of the detenu of making an effective representation and, therefore, the petition may be allowed. Apprehending a counter to the effect that the documents may not be ready, Mr. Patel submitted that all the documents demanded and supplied were ready in the year 1997-98 and, therefore, the delay is inordinate and has remained unexplained. The petition may be allowed.

4. Mr. K.T. Dave, learned Assistant Government Pleader, has opposed this petition. He does not dispute the factum of representation having been made to the Home Minister, State of Gujarat and that the documents have been supplied to the detenu. He, however, states that the documents were supplied by the detaining authority by communication dated 31st January, 2000. He submitted that procedural delay does occur in large machinery of the Government, which may not be adversely viewed.

5. Considering rival side contentions, the fact remains that certain documents were demanded on behalf of the detenu by making a representation. The same documents have been supplied after a lapse of about two months and four days, even if the date of communication is considered as 31st January, 2000. There is no dispute about the fact that the documents were ready and available in 1997-98. The delay in supply of documents for about two months and four days has remained unexplained, as no affidavit in reply is filed by any of the respondents. This inordinate and unexplained delay in supply of the documents would definitely amount to denial of right of the detenu of making an effective representation. This would vitiate the continued detention and the petition deserves to be allowed on this ground alone.

6. In view of the above discussion, the petition is allowed. The impugned order of detention dated 10th September, 1999 passed against the detenu is hereby quashed. The detenu-Suresh Shankarlal Thakkar is ordered to be set at liberty forthwith, if not required in any other matter. Rule is made absolute with no orders as to costs.

[A.L. DAVE, J.]

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